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Dobson Wireless, Inc.
SBC Communications, Inc. et al.
Oklahoma Section 271 Application

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Application by SBC Communications Inc.
Southwestern Bell Telephone Company, and
Southwestern Bell Communications Services, Inc.
d/b/a/ Southwestern Bell Long Distance for Provision
of In-Region InterLATA Services in Oklahoma

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CC Docket No. 97-1

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MAY 27 1997
Federal Communications Commission
Office of Secretary

**REPLY COMMENTS OF DOBSON WIRELESS, INC.
IN OPPOSITION TO SBC COMMUNICATIONS INC.'S APPLICATION
FOR SECTION 271 AUTHORIZATION IN OKLAHOMA**

Dobson Wireless, Inc. ("Dobson") submits these reply comments in opposition to the application filed by SBC Communications, Inc., Southwestern Bell Telephone Company ("SWBT") and Southwestern Bell Communications Services, Inc. (collectively referred to as "SBC") for in-region, interLATA authority in Oklahoma under section 271 of the Telecommunications Act of 1996.

In Dobson's initial comments, we pointed out that SBC failed to demonstrate compliance with the pricing element of the competitive checklist, including both pricing of network elements and pricing of physical collocation. The Comments filed by other parties confirm this conclusion.¹

¹ In its initial Comments, Dobson reported that it had an approved resale agreement with SWBT and was negotiating an interconnection agreement. Dobson has now signed an

1. SBC has not shown that SWBT's pricing of network elements complies with the Act.

In Dobson's initial comments, we pointed out that the network element rates generally offered by SWBT in Oklahoma are the interim rates approved by the Oklahoma Commission in the AT&T Arbitration. We further pointed out that in that Arbitration there was no finding that the rates were "based on the cost" of the network elements as required by Section 252(d)(1) of the Act. Indeed, the Arbitrator expressly refused to decide any of the issues concerning cost, but instead accepted SWBT's cost studies on the sole ground that it would be easier if the later true-up were in a downward rather than an upward direction. Dobson Comments at 3, quoting Report and Recommendations of the Arbitrator at 20, Cause No. PUD 960000218 (SBC App. Vol. III Tab 9). The Commission simply accepted the Arbitrator's report on this issue, with no further finding.

In its Comments supporting SBC's Application, the Oklahoma Commission has attempted to cure this obvious defect by making the following statement:

The interim rates established in Cause No. PUD 960000218 were supported by cost studies made available by SWBT to OCC's staff and AT&T pursuant to the OCC's rules and/or were taken from SWBT's Oklahoma or federal tariffs and/or were taken from contracts with other competitive local companies, which were negotiated at arm's length and approved by the OCC.

interconnection agreement with SWBT, and the agreement has been filed with the Oklahoma Commission for its approval. However, Dobson has not yet agreed to SWBT's terms for physical collocation at the Oklahoma City "Central" Central Office. See Dobson Comments at 6-7.

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Comments of the Oklahoma Corporation Commission dated April 30, 1997 at 9. This statement is totally inadequate as a substitute for a finding on costs. There is simply no indication in this statement that the Oklahoma Commission has reviewed the SWBT cost studies, addressed the issues raised by AT&T's testimony opposing those studies, and rationally resolved those differences in SWBT's favor.

The deficiencies in the Oklahoma Commission's belated "finding" accepting the SWBT proposed interim rates are particularly glaring in view of the significant problems with those rates revealed by the record. For example, as the Arbitrator summarized the evidence:

Where [the AT&T cost witness] did not accept the non-recurring rates proposed by SWBT, he took the cost based rates made public by SWBT in the Texas Arbitration proceeding. For example, for the basic rate interface 2-wire, AT&T proposed a nonrecurring rate which came from Texas which was \$ 39.50. In Oklahoma, SWBT proposed a \$118 rate for basic interface 2-wire. Another example was the additional basic rate interface 2-wire where the Texas rate was \$6.05 as compared to the Oklahoma proposed rate of \$61.85.

Report and Recommendations of the Arbitrator at 19. Moreover, as the MCI Comments point out, the interim rates adopted by the Oklahoma Commission vary from this Commission's proxy rates by two or three times in the case of some elements, and similar differences exist between the Oklahoma interim rates and rates derived from the Hatfield model. MCI Comments at 8-9 and Exh. C. In addition, the AT&T Comments contained a well-reasoned critique of the methodologies used by SWBT in the cost studies underlying the interim rates which the Oklahoma Commission accepted -- methodologies which systematically inflated the costs. AT&T Comments, Affidavit of Daniel P. Rhinehart at pp. 21-32.

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In the face of the large differences between the Oklahoma rates and other cost-based rates, and in light of AT&T's reasoned critique of SWBT's methodology, the Oklahoma Commission's cursory statement that SWBT's rates are "supported" -- without any further explanation -- totally fails to meet the minimum standards of adequacy for administrative findings. Such a "conclusory finding, without any real explanation," cannot serve as a basis for this Commission to determine that the Oklahoma interim rates comply with the checklist requirement of cost-based rates. Matlovich v. Secretary, 591 F.2d 852, 855, 857 (D.C. Cir. 1978).

The Oklahoma Commission also attempted to justify its interim rates by stating that some of them "were taken from contracts with other competitive local companies, which were negotiated at arm's length and approved by the OCC." That is also insufficient to show that the rates are cost-based. Dobson entirely agrees with the point made by Brooks Fiber that competitive carriers, as a matter of business necessity, must sometimes agree to unreasonable interconnection rates "in order to avoid undue delay in commencing the interconnection implementation process." Comments of Brooks Fiber Properties, Inc. at 31.

The Oklahoma Commission also states that it approved the negotiated rates. But that is not relevant to the issue of cost-based rates. Section 252(e)(2)(A) of the Act requires that negotiated agreements be approved if they do not discriminate and are consistent with the public interest. Approval of negotiated rates does not mean they are cost-based. Nor is the Oklahoma Commission's statement that some of the interim rates are reflected in tariff filings relevant,

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absent a showing (which it cannot make) that the tariff filings were supported by cost studies meeting the standards of the Act.

We agree with the argument made by other parties that interim rates are inherently deficient as a basis for finding compliance with the competitive checklist, particularly in view of the uncertainty created by the challenge to TELRIC methodology currently pending in the Eighth Circuit. Sprint Comments at 20-21; MCI Comments at 7-8. The fact that interim rates are subject to later true-up -- which may be up or down² -- makes them an inadequate basis for the business decisions that must be made by potential competitors considering whether to enter the Oklahoma market, and the level of resources to commit to this effort.

Cox Oklahoma Telecom, Inc. has filed an application requesting the Oklahoma Commission to determine the appropriate costing methodology and establish the permanent rates for SWBT's unbundled network elements. Cause No. PUD 970000213. The parties to the case, including SWBT, have agreed to a procedural schedule resulting in a hearing on the merits in January, 1998. Until this cause before the Commission is finally resolved and permanent rates

² The Arbitrator in the AT&T Arbitration suggested that, because he accepted SWBT's proposed rate as a basis for interim rates, the eventual true-up would have to be in a downward direction. However, the Arbitrator's decision recognizes that permanent rates will be based on further cost studies to be done by SWBT and AT&T. Report and Recommendations of Arbitrator at 19. There is no assurance that SWBT's recommended permanent rates, based on its further studies, will not be even higher than the interim rates. In addition, SWBT is currently challenging the TELRIC methodology on which its Oklahoma cost studies were based; if this challenge is successful, the permanent rates might be higher than the interim rates for this reason as well.

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established, carriers considering competitive entry within the State of Oklahoma will not in a position to make an informed business decision since they will not know what rates they will have to pay for unbundled network elements.

In any event, even if interim rates in some circumstances were considered adequate for purposes of checklist compliance despite their inherent uncertainty, the Act still requires a finding that the rates are cost-based. In this case, that finding is entirely lacking. For this reason alone, SBC has failed to demonstrate compliance with the competitive checklist, and its application must be denied.

2. SBC has not shown that its provision of physical collocation complies with the Act.

In its initial comments, Dobson pointed out that it was faced with apparently excessive quotes for physical collocation, and that the Commission is not in a position to determine the cost basis for these quotes because they are based on data for which SWBT claims proprietary protection. The Department of Justice Comments confirm that physical collocation on adequate terms continues to be a major obstacle to local exchange competition in Oklahoma. Department of Justice Comments at 31-33 and n. 41. SBC carries the burden of demonstrating compliance with the competitive checklist. On the basis of the current record, there is no basis for a finding of compliance with respect to the provision of physical collocation.

In sum, local exchange competition is totally non-existent with respect to residential

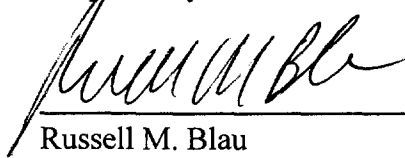
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customers in Oklahoma, and competition for business customers has barely begun. In these circumstances, it is doubtful whether a finding could be made that the public interest favors SBC's application even if it had complied with the checklist. But it has failed to demonstrate checklist compliance with respect to the basic issue of pricing network elements, as well as adequate provision of physical collocation. In these circumstances, the application must be denied.

CONCLUSION

SBC's application for in-region interLATA authority in Oklahoma should be denied.

Respectfully submitted,



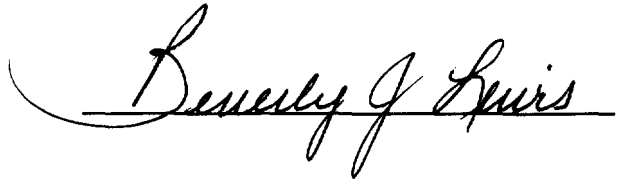
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May 27, 1997

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Certificate of Service

I hereby certify that copies of the foregoing Reply Comments of Dobson Wireless, Inc. in Opposition to SBC Communications Inc.'s Application for Section 271 Authorization in Oklahoma were served this 27th day of May, 1997, to each on the attached service list, either by hand delivery (as indicated by an asterisk (*)) or by first class mail.

A handwritten signature in cursive script, reading "Beverly J. Lewis", is written over a horizontal line.

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